IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1596 OF 2006

Chirag Mahendra Vora. ...Petitioner.
Vs.
The Brihan Mumbai Municipal Corporation &Anr. ...Respondents.
....
Mr.V. P. Sawant i/b. Vinay M.Bhate for the Petitioner.
Mr. N.N. Shaikh for the Respondents.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.

February 27, 2007.

P.C.

While disposing of the complaint filed by the Petitioner against the fixation of ratable value, the Investigating Officer has observed as follows :

> "In view of the argument before me and confirmation of Supdt. that on inspection, construction work is started on the plot. I feel, even though TDR or FSI is used, the construction work is started on the plot and therefore the plot should be assessed as a developed plot."

The aforesaid observation of the Investigating Officer is contrary to the law laid down by the Supreme Court in **The Municipal Corporation of Greater Mumbai vs. Polychem Ltd.**[1] The

1 AIR 1974 SC 1779

Supreme Court observed as follows:

> "All that Section 154 seems to contemplate, by mentioning "land or building" is that land which is vacant or which has not been built upon may be treated, for purposes of valuation, on a different footing from land which has actually been built upon. But, relevant provisions of the Act do not mention and seem to take no account, for purposes of rating, of any building which is only in the course of being constructed although Section 3(r) of the Act makes it clear that land which is being built upon is also "land". Hence, so long as a building is not completed or constructed to such an extent that at least a partial completion notice can be given so that the completed portion can be occupied and let, the land can, for purposes of rating, be equated with or treated as vacant land. It is only when the building which is being put up is in such a state that it is actually and legally capable of occupation that the letting value of the building can enter into the computation for rating "rebus sic stantibus". Although, the definition of land, which is rateable, covers three kinds of "land", yet, for the purposes of rating Section 154 recognises only two categories. Therefore, all "land" must fall in one of these two categories for purposes of rating and not outside."

In these circumstances, there is merit in the submission that the impugned order is unlawful. In order to facilitate a fresh determination, the impugned order dated 31st March 2006 of the Investigating Officer is quashed and set aside. The proceedings shall stand remitted back to the Investigating Officer for reconsideration. The Investigating Officer shall furnish the Petitioner an opportunity of being heard. The Petitioner shall

appear before the Investigating Officer for receiving directions as to the date of hearing on 12th March 2007. In the circumstances, until a fresh determination is made by the Investigating Officer, the Municipal Corporation shall not act in pursuance of the warrant of attachment dated 21st July 2005 and the sale notice dated 18th January 2006. It is needless to add that after the final determination is made by the Investigating Officer, it would be open to the Municipal Corporation to take necessary steps in accordance with law.

The Petition is accordingly disposed of.

.....